124 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gas Transmission Corporation — Docket No. RP08-401-000

Atmos Energy Marketing, LLC — Docket No. RP08-403-000
BP Energy Company
Delta Energy, LLC
Direct Energy
Hess Corporation
Honda of America Mfg., Inc.
Integrys Energy Services, Inc.
Interstate Gas Supply, Inc.
National Energy Marketers Association
Ohio Farm Bureau Federation
Sequent Energy Management, L.P
Complainants

v.

Columbia Gas Transmission Corporation
Respondent

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS AND ESTABISHING A TECHNICAL CONFERENCE

(Issued July 2, 2008)

1. On June 5, 2008, Columbia Gas Transmission Corporation (Columbia) filed tariff sheets pursuant to Section 4 of the Natural Gas Act (NGA), to clarify the nature of the Master List of Interconnect points (MLIs) and their use as identifiers of virtual scheduling points in Columbia's tariff. Columbia proposes a July 5, 2008 effective date for its proposed tariff sheets.[1] On June 6, 2008, the captioned group of shippers on

[1] Columbia submits Eleventh Revised Sheet No. 501, Sixth Revised Sheet No. 502A, Fifth Revised Sheet No. 502B, Eleventh Revised Sheet No. 503, Fifth Revised Sheet No. 503A, Fourth Revised Sheet No. 504, and Fourth Revised Sheet No. 505A, to Columbia's FERC Gas Tariff, Second Revised Volume No. 1.

Columbia's system, (Columbia Shippers) filed a complaint pursuant to section 5 of the NGA, regarding several practices on Columbia's system. Because these filings are inextricably linked, the Commission will, on an initial basis, consider both filings at greater length in a technical conference to be held in the instant docket as discussed below. Accordingly, the instant tariff sheets are accepted and suspended to be effective December 1, 2008, subject to the outcome of a technical conference.

Background

2. Columbia maintains on its EBB a Master List of Interconnections. Section 1.23 of the General Terms and Conditions (GT&C) of Columbia's tariff defines the term Master List of Interconnections as follows:

> "Master List of Interconnections" or "MLI" shall mean the list of interconnections, including receipt and delivery points with third parties, aggregation points, and paper pools, eligible for transportation services as maintained by Transporter on its EBB on an ongoing basis.

3. Columbia's tariff also includes *pro forma* service agreements for service under each of its rate schedules. Those *pro forma* service agreements include an Appendix A with blanks for setting forth such provisions of an individual shipper's service agreement as its contract demand and the beginning and end dates of the contract. These appendices include headings under which information concerning "Primary Receipt Points" and "Primary Delivery Points" is listed. Under each of those two headings are subheadings for identifying, as here relevant, "Scheduling Point No.," "Scheduling Point Name," "Measuring Point No.," "Measuring Point Name," the "Maximum Daily Quantity" for each receipt point, and the "Maximum Daily Delivery Obligation Point (Dth/day)" for each delivery point. Below the spaces for this information, is the statement:

> The Master List of Interconnects (MLI) as defined in Section 1 of the General Terms and Conditions of Transporter's Tariff is incorporated by reference for the purposes of listing valid secondary interruptible receipt and delivery points.

Details of Columbia's NGA Section 4 Filing

4. In the instant filing, Columbia proposes to revise the statement concerning the Master List of Interconnections in Appendix A of its *pro forma* service agreements so that it will read as follows, with deleted language for certain sheets shown in italics and added language shown in bold:

> The Master List of Interconnects (MLI) as defined in Section 1 of the General Terms and Conditions of Transporter's Tariff is incorporated by reference for the purposes of listing valid secondary *interruptible* receipt and delivery points. **MLIs are identified as Scheduling Points on this Appendix for convenience only. Physical receipt and delivery points are identified by Measuring Points. Pursuant to GT&C Section 1 of this tariff, MLIs remain subject to change from time to time by Transporter in its sole discretion and without amendment of this service agreement.**

5. Columbia states that it intends the added language to clarify the distinction between the "measuring points" and "scheduling points" listed in Appendix A. Columbia states that the "measuring points" are a firm shipper's primary receipt and delivery points under its service agreement and, in all cases, those points are individual physical points. By contrast, according to Columbia, the "scheduling points" are "virtual" points to be used by shippers when scheduling service. As such, a scheduling point may represent either a single, or many, physical points in one operationally distinct area of Columbia's system. Columbia states that such virtual scheduling points permit Columbia's customers to nominate transportation service to a physical point by simply nominating to the virtual scheduling point, instead of being required to nominate directly to each physical point associated with the virtual point.

6. Columbia asserts that the Master List of Interconnections it maintains on its EBB pursuant to section 1.23 of its GT&C is a list of scheduling points, not measuring points. Thus, the Master List of Interconnections, as maintained by Columbia, appears to be a list of virtual points, not physical points. In its filing, Columbia uses the term "MLI" to refer to the points included in the Master List of Interconnects, rather than to the list itself, and in the remainder of this order, we will use that term in the same sense. Columbia asserts that the list of MLIs posted on its EBB includes an indication of which physical receipt and delivery points are scheduled though those points. Columbia also asserts that the definition of MLI in section 1.23 of its GT&C makes clear that the list of MLIs is fluid and changes over time as new points are added and old points deleted. Columbia asserts that in accordance with this tariff provision, Columbia may update this list on its EBB without obtaining Commission authorization and, therefore, the proposed language revisions to the appendices of its various service agreements appropriately clarifies that it has sole discretion to modify the MLIs listed in the service agreements as scheduling points without modifying the service agreements.

7. Columbia asserts that in 1999, it added additional MLIs without first making a filing with the Commission. Columbia states that at that time Columbia moved from

using MLIs to define 10 Operating Areas to using them to define the 40 Market Areas used today. Columbia assert that in 1999, as in the instant proposal, capacity allocation on Columbia's system will be more specifically directed, which will better serve customers by maximizing available capacity across the system. Columbia states that it intends to add more virtual MLIs so that some MLIs will include fewer physical interconnect points and may cover a smaller geographic area. Columbia asserts that this will enable Columbia to more fully understand business on its system and will allow Columbia to manage its system to minimize the impact of constraints on shippers.

8. Lastly, Columbia claims that changes in the MLIs do not change the existing service agreement it has with its shippers. Columbia asserts that because of their nature, MLIs used as scheduling points are not essential terms of Columbia's service agreements and are subject to change as referenced in the tariff. Columba argues that the inclusion of MLIs on the Appendices of customer service agreements does not make them essential contract terms. Columbia asserts that in addition to rate and term, the essential contract provisions are the actual physical receipt and delivery points identified as the Measuring Points and the Maximum Daily Delivery Obligations (MDDOs) at delivery points that are identified on the Appendices to the Service Agreements. Columbia claims that these measuring points are the points to which Columbia is obligated to receive or deliver the stated quantities of gas. Columbia maintains that the inclusion of the scheduling points in the service agreements does not make them essential to the agreement or the provision of service.

9. Columbia argues that because the MLIs are not essential terms of the service agreements, adding to them and changing them will not prevent customers from nominating their primary firm services and Columbia is not taking primary firm capacity from customers who have it under contract. Columbia asserts that although the virtual MLI references are changing, there will be no change to a customer's primary firm capacity under contract and its ability to nominate and use that capacity with the same primary firm priority it now enjoys because Columbia is simply changing the virtual reference point from one MLI to another virtual reference point. Columbia asserts that the net result is that a customer can still schedule service, and customers are not losing the primary firm rights provided for in their service agreements.

Public Notice of Columbia's NGA Section 4 Filing

10. Public notice of the Columbia's filing was issued on June 6, 2007, with interventions and protests due as provided in section 154.210 (18 C.F.R. § 154.2210 (2008)) of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on

existing parties. The Columbia Shippers, Orange and Rockland Utilities, Inc.,(Orange and Rockland), Integrys Energy Services (Integrys), The National Grid Gas Delivery Companies (National Grid),[2] NiSource Distribution Companies (NiSource),[3] The East Ohio Gas Company and Hope Gas, Inc. (Dominion LDCs), all filed comments or protests to the instant filing.

11. Several of these parties claim that Columbia failed to support its need to change its tariff, its need to change the existing points on the MLI, or its need to change its operations.[4] They argue that Columbia failed to identify any benefits that will accrue to the shippers from the proposed changes. These parties contend that Columbia's proposed changes to the tariff and the MLI would adversely impact existing firm and capacity release shippers' flexibility to serve markets behind existing points on the MLI, would require significant new administrative expenses to nominate and monitor gas flows, and would degrade the capacity release market, with no countervailing gain such as within-the-path firm transportation rights.

12. Many of the protests claim that Columbia is actually proposing to change unilaterally hundreds of contractual obligations between Columbia and its shippers without the consent of the shippers. Several protests, such as that of Orange and Rockland, also take specific exception to the proposed tariff language that would reserve to Columbia's "sole discretion" to change both the points posted on the MLI and to change contracts without amendment as contrary to Commission policy. Orange and Rockland requests that the Commission reject the "sole discretion" tariff language.

13. Integrys and the Columbia Shippers urge rejection of Columbia's filing; or, in the alternative support the recommendations of National Grid and Dominion LDCs, that the

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[2] The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc., d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA.

[3] Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.

[4] For example, *see* comments of Integrys, the Columbia Shippers, National Grid, and the Dominion LDCs.

Commission suspend the instant tariff sheets for a full five-month suspension period and that this proceeding be held subject to the outcome of the complaint proceeding in Docket No. RP08-403-000. NiSource and others request that the Commission hold a technical conference in this proceeding.

14. On June 24, 2008, Columbia filed an Answer to these protests which the Commission will accept in order to fully understand the filing. Columbia claims that its proposal simply clarifies its existing tariff authority. Columbia claims that points listed on the MLIs are used for scheduling purposes only. These points, Columbia continues, are posted only on its EBB, are not in its tariff, and may be changed at any time without Commission prior approval. Columbia claims that because the MLI points are a convenience, they are not a contract or operational necessity. Columbia explains that firm contract demand levels are assigned at physical points, not MLI points, thus, by changing MLI points, there is no impact on Columbia's and shippers' contract rights and obligations. Columbia claims that the proposed changes do not impact existing service primary, secondary or capacity release rights. Therefore, Columbia concludes, the protests should be dismissed.

Columbia Shippers NGA Section 5 Complaint

15. On June 5, 2008, one day after Columbia's NGA section 4 filing, the Columbia Shippers filed a complaint pursuant to section 5 of the NGA in the captioned docket.[5] The Columbia Shippers assert that Columbia has announced its intention to implement unilaterally, new primary delivery points for firm services effective July 1, 2008, through actions not reflected in its tariff, and for which Columbia does not intend to seek approval from the Commission. The Columbia Shippers assert that that Columbia's proposal abrogates currently effective service agreements and restricts service flexibility. The Columbia Shippers argue that under this proposal, firm shippers that schedule gas to a single primary point under a current contract will henceforth be required to schedule to as many as ten different delivery points and that each delivery point will for the first time have an apportioned share of the total contract quantity as the specified maximum quantity for scheduling purposes.

16. Columbia Shippers maintain that Columbia is not merely "adding" primary points. They assert that Columbia is replacing existing primary points with new primary points

[5] The Columbia Shippers state that, according to Columbia's most recent Index of Customers Report, filed January 2, 2008, members of the Columbia Shippers hold more than 130 firm forward haul contracts with Columbia representing an aggregate maximum contractual daily quantity of more than 400,000 dth per day.

that subdivide shippers' firm services in a manner that a shipper would have had no reason to envision at the time it entered into a firm contract with Columbia. They assert that contrary to Columbia's assertions, a legal requirement that it maintain the list of MLIs is not tantamount to unlimited authority to change the list at will to delete MLI points that are identified in current shipper contracts as primary scheduling points.

17. In essence, the Columbia Shippers argue that Columbia's unilateral change in its Master List of Interconnects affects currently effective contracts, because it changes the primary delivery points under those contracts for scheduling purposes. The Columbia Shippers maintain that if Columbia carries out these actions, it will be in violation of both the NGA, which requires that all interstate pipelines include within their tariffs the terms and conditions relevant to jurisdictional services, and Part 154 of the Commission's Regulations, which requires that pipelines seek authorization prior to amending their tariffs. They also assert that Columbia will also be in violation of its certificate under Subpart G of Part 284 of the Commission's Regulations, which establishes flexible receipt and delivery point requirements.

18. Further, the Columbia Shippers argue that if the Commission were to grant Columbia's proposal for a change of its system scheduling, the Commission should also require Columbia to justify whether waiver of the physical segmentation requirements of Order No. 637 are still necessary on its system through the submission of an adequate factual showing.

19. The Columbia Shippers assert that although Columbia has announced that its new primary points will become effective only on November 1, 2008, after its new "Navigates" computer system has been implemented, firm shippers who would be forced to request new primary delivery points and to transfer their contract quantities, must do so by July 31, 2008. The Columbia Shippers argue that this leaves inadequate time given the lack of any assurance from Columbia that it can grant contract quantity delivery point shift requests, and that it could result in service disruptions at a time of critical demand.

20. The Columbia Shippers request that the Commission direct Columbia to cease and desist from its unlawful modification of the primary delivery point designations in its firm transportation agreements, as set forth in the MLI Notice. The Columbia Shippers further request that the Commission order Columbia to refund any penalties imposed based on the unlawful redesignation of measurement points as scheduling delivery points.

Public Notice of the NGA Section 5 Complaint

21. Public notice of the complaint filed by the Columbia Shippers was issued on June 9, 2007, with interventions and protests due as provided in section 154.210 (18 C.F.R. § 154.2210 (2008)) of the Commission's regulations. Pursuant to Rule 214

(18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The notice stated that the Respondent's answer and all interventions, or protests must be filed on or before the June 20, 1998 comment date. The Constellation Energy Commodities Group, Inc., Compass Energy Service Inc., Stand Energy Corporation, the Ohio Oil and Gas Association, the City of Charlottesville, Virginia and the City of Richmond, Virginia, the American Forest and Paper Association, the American Iron and Steel Institute, the Independent Petroleum Association of America and the Process Gas Consumers Group, PSEG Energy Resources & Trade, LLC, Easton Utilities Commission and Virginia Natural Gas, Inc filed comments supporting the complaint proceeding and/or requesting further proceedings to examine the issues raised by the complaint.

22. On June 20, 2008 Columbia filed an Answer to the Complaint. In its Answer Columbia argues that Columbia Shippers' complaint is premised on the assertion that MLIs grant shippers primary delivery point rights. Columbia asserts that this premise is false, and that the MLI scheduling points are not physical delivery points but rather, administratively-created virtual scheduling points used to facilitate the nomination and scheduling process. Columbia states that primary firm delivery point rights are not established at these virtual points, but at the physical points of delivery on Columbia's system.

23. Further, Columbia asserts that because these MLI scheduling points have no effect on any primary firm physical delivery point rights, any change to the MLI does not constitute either a modification of Columbia's terms and conditions of service or a unilateral abrogation of contract. Columbia argues that after the new MLI points are implemented, shippers will have the same primary physical delivery points and MDDO rights that are currently set forth in their firm transportation service agreements. It argues that changing the "Scheduling Point" designation in a shipper's agreement will have no impact on the primary physical points and MDDOs set forth in the service agreement and that shippers will still have the same contractual right to take gas at the same physical points and in the same quantities as they currently enjoy. Columbia asserts that the only thing that might change is the number of nomination(s) the shipper may be required to submit in order to deliver gas to their virtual MLI scheduling points and that this simply does not constitute contract abrogation.

24. Moreover, Columbia asserts that its tariff expressly provides it with the right to make changes to these MLI scheduling points without prior Commission approval, and this has been Columbia's long-standing practice. However, Columbia states that, in

response to Columbia Shippers' request for relief, Columbia has withdrawn the July 31, 2008 MDDO queue process proposal and that the Columbia Shippers and others may submit any MDDO or point shift request they might have at any time.

25. Lastly, Columbia argues that the Columbia Shippers also make numerous vague and unsupported allegations regarding the impact of its proposed changes. Columbia asserts that these arguments are nothing more than collateral attacks on prior Commission orders. Columbia maintains that the failure of the Columbia Shippers to clearly and accurately identify the actions Columbia has taken, combined with the lack of any substantiation of their claims, should leave the Commission with no option but to dismiss the complaint.

Discussion

26. The Commission finds that the Columbia's NGA section 4 tariff filing and the complaint filed pursuant to section 5 of the NGA by the Columbia Shippers raise a variety of common issues as pointed out by the various parties to these proceedings. In order to fully evaluate the merits of these filings, the Commission finds that it is necessary to hold a technical conference where the details of the instant NGA section 4 proposal and NGA section 5 complaint may be explored at greater length. Accordingly, the Commission will accept the instant tariff sheets and suspend them until December 1, 2008, subject to the outcome of the technical conference.

27. Both Columbia and the Columbia Shippers are directed to respond to the issues raised by the parties to these proceedings and the Commission staff at the technical conference. Among other things, the technical conference should explore how Columbia's proposal will affect shippers' existing ability to schedule service on a primary firm basis. Consistent with Commission policy, Columbia's tariff provides that nominations to schedule primary firm service have priority over all other scheduling nominations.[6] Columbia appears to assert that, in its sole discretion, it may remove from its Master List of Interconnections an MLI that currently covers a number of physical points and replace that MLI with separate MLIs for each of those physical points. If an MLI thus removed from the Master List of Interconnections is currently included as a scheduling point in an existing shipper's service agreement, that shipper will presumably have to replace the MLI listed in its service agreement with one or more of the new MLIs. Columbia must be prepared to explain at the technical conference (1) what process it proposes to use to carry out the change in such a shipper's service agreement

[6] Section 7 of Columbia's General Terms and Conditions, Second Revised Volume No. 1.

and (2) whether and how the change in the shipper's service agreement will affect the shipper's existing ability to schedule service on a primary firm basis at the physical points covered by the replaced MLI.

Suspension

28. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend them to be effective December 1, 2008, subject to the conditions set forth in this order.

29. The Commission's policy regarding tariff filing suspensions is that such filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See, Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See, Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective December 1, 2008, subject to the outcome of the technical conference established herein.

The Commission orders:

(A) The tariff sheets listed in footnote no. 1, are accepted and suspended to be effective December 1, 2008, subject to the outcome of a technical conference to be established in the instant proceeding.

(B) Staff is directed to convene a technical conference in the captioned dockets to explore the issues raised by the parties and Commission staff. The Staff is directed to report the results of the technical conference within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.